

Court No. - 6

Case :- WRIT - A No. - 9484 of 2023

Petitioner :- Dharmesh Rai

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Vocational Education And Skill Development Lko. And Another

Counsel for Petitioner :- Pradeep Chandola, Abhishek Dwivedi

Counsel for Respondent :- C.S.C.

Alongwith

(1) **Case :-** WRIT - A No. - 2087 of 2024

Petitioner :- Ajay Kumar Srivastava

Respondent :- State Of U.P Thru. Addl. Chief Secy. Vocational Education And Skill Development Lko. And Another

Counsel for Petitioner :- Abhishek Dwivedi, Pradeep Chandola

Counsel for Respondent :- C.S.C.

(2) **Case :-** WRIT - A No. - 1993 of 2024

Petitioner :- Sanjay Prakash

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Vocational Education And Skill Development Lko. And Another

Counsel for Petitioner :- Abhishek Dwivedi, Pradeep Chandola

Counsel for Respondent :- C.S.C.

(3) **Case :-** WRIT - A No. - 1198 of 2024

Petitioner :- Ram Dularey Mishra

Respondent :- State Of U.P. Thru. Addl. Chief Secy., Vocational Education And Skill Development, Lko. And Anr

Counsel for Petitioner :- Abhishek Dwivedi, Pradeep Chandola

Counsel for Respondent :- C.S.C.

(4) **Case :-** WRIT - A No. - 2328 of 2024

Petitioner :- Hanuman Prasad Mishra

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Vocational Education And Skill Development Lko And Another

Counsel for Petitioner :- Abhishek Dwivedi, Pradeep Chandola

Counsel for Respondent :- C.S.C.

(5) **Case :-** WRIT - A No. - 2337 of 2024

Petitioner :- Uma Raman Tripathi

Respondent :- State Of U.P. Thru. Its Addl. Chief Secy. Vocational Education And Skill Development And Another

Counsel for Petitioner :- Abhishek Dwivedi, Pradeep Chandola

Counsel for Respondent :- C.S.C.

(6) **Case :-** WRIT - A No. - 6535 of 2024

Petitioner :- Rakesh Mani Tripathi

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Vocational Education And Skill Development Lko. And 2 Others

Counsel for Petitioner :- Abhishek Dwivedi, Pradeep Chandola

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Sri Pradeep Chandola, learned counsel for the petitioners as well as learned Standing Counsel for the respondents.

2. Counter affidavits filed today are taken on record.

3. Since common question has arisen in this bunch of writ petitions, where in all the writ petitions order dated 20.10.2023, passed by the Director, Training and Employment Directorate, U.P., Lucknow has been challenged, consequently, all petitions are being decided by this common judgment.

4. Grievance of the petitioners is with regard to their regularisation and more specifically since 2005. It has been submitted that the petitioner are working on the post of Instructor in various disciplines in ITI run by the State Government and have been appointed on Daily Wages on Group-C post, having been appointed between 1992-1994, and their claim for regularisation was not considered by the respondents, consequently, writ petition was filed before this Court being Writ Petition No. 5683 (S/S) of 1995, which was finally allowed on 16.02.2024. The said writ petition was allowed and the respondents

were directed to consider regularisation of the members of the Association who were working on the post of Instructor on Daily Wage basis prior to 30.06.1998 against existing vacancies which come outside the purview Public Service Commission. The said writ petition was filed by the U.P. Rajkiya Audhyogik Prashikshan Sansthan Dainik Vetan Karmchari Sangh.

5. It is submitted that in compliance of interim order passed by this Court in the aforesaid writ petition, that an order dated 29.08.2005 was passed by the respondents regularising services of the petitioner and other similarly situated persons with effect from 2005. The said order was subjected to final outcome of the Special Appeal which has been filed by the State at the time when the said order was passed. The special appeal which was filed by the State being Special Appeal No. 339 of 2004, which was decided by means of judgment and order dated 10.07.2014 and the order of learned Single Judge was modified to the extent that it was provided that regularisation of the members of the Association shall be considered to having been made under the provisions of U.P. Regularisation of Daily Wage Appointment on Group 'C' Post (Outside the purview of the U.P. Public Service Commission) Rules, 1998 and not under the provisions of U.P. Regularisation of Ad hoc Appointments (on post within the purview of the Public Service Commission) Rules, 1979.

6. According to the petitioners the dispute culminated with passing of the judgment by the Division Bench on 10.07.2014 and liberty was given to the respondents to pass fresh order and the said judgment is infact clarification with regard to the orders passed by the State Government previously on 29.08.2005, regularising services of the petitioners with effect from 2005.

7. The controversy in the present case has arisen on account of the fact that the State Government, considering the judgment passed in Writ Petition No. 339 of 2004 by the Division Bench on 10.07.2024, thought that they have to pass fresh order as the direction of the Court was to the State Government for re-consideration of the case of the petitioners. Accordingly, they proceeded to pass fresh order on 23.11.2016, regularising the services of the petitioners with effect from 2016, considering the provisions of U.P. Regularisation of Daily

Wage Appointment on Group 'C' Post (Outside the purview of the U.P. Public Service Commission) Rules, 1998.

8. One person who was similarly situated as the petitioners, namely Jagdish Prasad Verma being aggrieved by judgment and order dated 23.11.2016, filed writ petition No. 171 of 2017. Initially as an interim measure, this Court stayed the operation of order dated 23.11.2016, but finally the said writ petition came to be dismissed by means of judgment and order dated 08.01.2021.

9. It is during the period the interim order was operating, an order dated 22.03.2017 was passed by the respondents extending the benefit of the interim order to all the similarly situated persons including the petitioners. Against dismissal of Writ Petition No. 171 of 2017, Jagdish Prasad Verma has filed Special Appeal No. 80 of 2021, which remained pending and after dismissal of the writ petition the respondents proceeded to pass fresh order dated 19.02.2021 withdrawing the benefit granted to the petitioners by order dated 22.03.2017.

10. The order dated 19.02.2021, also came to be challenged before this Court in Writ Petition (Writ - A) No. 20031 of 2021, where this Court was of the view that said benefit could not have been withdrawn without giving opportunity of hearing to the petitioner and consequently set aside the orders dated 09.02.2021 and 23.11.2016 and directed the respondents to pass fresh order after giving appropriate opportunity of hearing to the petitioner. It is in compliance of directions of this Court dated 13.02.2023, where order dated 20.10.2023 has been passed which has been impugned in the present writ petition.

11. As per impugned order dated 20.10.2023, the respondents have re-considered the entire conspectus of the case and the rules applicable to the petitioner and have directed the regularisation with effect from 2015. During the aforesaid exercise, Special Appeal filed by the Jagdish Prasad Verma being Special Appeal No. 80 of 2021 was pending which came to be decided on 30.08.2024. The entire facts narrated therein were duly considered by the Division Bench and the special appeal was allowed and the petitioner therein was treated to have been regularised in terms of judgment of Division Bench dated

10.07.2014 from the date of his regularisation as per Rules, 1998, which means that their services were regularised from 2005.

12. As the entire facts have been duly considered by the Division Bench, it would be appropriate to reproduce the judgment and order dated 30.08.2024, passed in Special Appeal No. 80 of 2021, same is quoted herein below :-

"Heard Shri G.C. Verma, learned Counsel for the appellant and Shri Gopal Kumar Srivastava, learned Standing Counsel for the respondents.

This is an appeal challenging the judgment and order dated 08.01.2021 passed in writ petition bearing number 171 (S/S) of 2017, as also, the order dated 28.11.2016 passed by Director, Training & Employment, Lucknow.

The facts of the case in brief are that the appellant was engaged on daily wages as Instructor in the Directorate of U.P. Training and Employment on 07.01.1991. A writ petition was filed by Association of such Instructors bearing Writ Petition No. 5683 (S/S) of 1995 (Karamchari Kalyan Samiti, Lucknow & Anr. Vs. State of U.P. & Ors.). The said writ petition was decided on 16.02.2004. The operative portion of the judgment reads as under:-

"A writ in the nature of mandamus is issued to the opposite parties commanding them to consider regularization of those members of the petitioner-association who were working on the post of Instructor on daily wage basis prior to 30.6.1998 against the existing vacancies which have come outside the purview of Public Service Commission, before making any regular appointment in accordance with relevant rules, as expeditiously as possible, preferably within a period of 2 months from the date of production of a copy of this order and till they are considered for regularization, they shall be allowed to continue as such."

Being aggrieved, the State of U.P. challenged the said judgment by means of Special Appeal no. 339 of 2004. The appeal of the State was allowed in part and the judgment of the learned Single Judge dated 16.02.2004 was modified. In the interregnum, i.e. before the passing of the said judgment in appeal and after passing of the judgment by the Single Judge on 16.02.2004, the judgment of the Single Judge was complied and services of the members of the said Association i.e. a total of 8 persons including the appellant herein were regularized by means of order dated 19.09.2005. The said regularization was subject to the result of the appeal referred herein above. Ultimately, when the

appeal came up for hearing, the Division Bench hearing the appeal found that services of concerned persons which included the appellant had already been regularized. However, it found that the learned Single Judge while issuing the direction for regularization had referred to the Rules known as U.P. Regularization of Ad hoc Appointments (on post within the purview of the U.P. Public Service Commission) Rules, 1979 {hereinafter referred as Rules, 1979}, as amended from time to time, whereas the said rule did not apply to daily wage employee. For the daily wage employees, another set of Rules known as the U.P. Regularization of Daily Wage Appointment on Group 'C' Post (Outside the purview of the U.P. Public Service Commission) Rules, 1998 {hereinafter referred as Rules, 1998}, were applicable. Accordingly, noticing the fact that 36 Instructors working in I.T.I. had already been regularized in accordance with the provisions of the Rules, 1998 by means of earlier order dated 21.09.2001, as such it directed the members of the respondent-Association before it who had been regularized (i.e. which included the appellant herein along with 7 other persons) shall be treated to have been regularized under the aforesaid Rules, 1998 and not under the Rules, 1979. It accordingly found force in the submission of the learned Standing Counsel only to this extent otherwise it observed that since the members of the respondent-Association have been regularized in service much earlier, which according to the appellant herein included persons junior to him whose names figure at Serial No. 24 & 26 in the order dated 21.09.2001 (by which their services were regularized), therefore, the Co-ordinate Bench provided that regularization of the said persons (i.e. the 8 persons including the appellant) shall be treated to have been made under the provisions of Rules, 1998 and not under the Rules, 1979. Thus, the regularization of the appellant and 7 other persons made vide order dated 19.09.2005 was approved and affirmed subject to the aforesaid modification that the said regularization shall not be treated as one under the Rules, 1979 but under the Rules, 1998. In doing so, the Court also took into consideration the earlier regularization of other members which according to the appellant herein, some of whom were junior to him, as mentioned herein above and a fact which was specifically asserted before the learned Single Judge Bench in Paragraph 8 of the writ petition. The said specific averment in Paragraph 8 of the petition has not been replied specifically by the State. The appellant has already retired from service on 31.07.2022.

Be that as it may, the said judgment dated 10.07.2014 passed by the Co-ordinate Bench in the appeal referred above has attained finality between the parties, therefore, any action contrary to the said

judgment is unacceptable. The law is trite that even an erroneous judgment is binding between the parties or at least its operative portion is binding upon them, this is so even where the law undergoes a change subsequently.

Learned Counsel for the State could not deny the fact that this judgment dated 10.07.2014 passed in Special Appeal No. 339 of 2004 has attained finality. He however contended that the operative portion of the said judgment gave liberty to the State Government to consider the case of the members of the Association for regularization under the Rules, 1998. With respect, we disagree with the contention, as, it is apparently contrary to what has been stated by the Division Bench. To satisfy the learned Standing Counsel who has argued the matter, we quote the operative portion of the aforesaid judgment:-

"Since the members of the respondent association have been regularized in service much earlier, it is provided that their regularization shall be treated to have been made under the provisions of U.P. Regularization of Daily Wage Appointment on Group 'C' post (Outside the purview of the U.P. Public Service Commission) Rules, 1998 and not under the provisions of U.P. Regularization of Ad hoc appointments (on post within the purview of the Public Service Commission) Rule, 1979.

The judgment and order dated 16.02.2004 passed by the learned Single Judge stands modified, in above terms.

The special appeal is allowed partly."

Nowhere, does it give liberty to the State to reconsider the matter or consider the regularization again. What it says is that the regularization is already done, as mentioned in the earlier part of the judgment, that shall be treated as having being made under the Rules, 1998 and not under the Rules, 1979.

For some inexplicable reason, the State authorities revisited the matter in spite of the fact that the matter stood already closed by the judgment of the Division Bench of the High Court and passed another order on 28.11.2016 wherein after quoting the relevant extract of the said judgment dated 10.07.2014, it has been mentioned that the appellant herein did not fulfill the conditions of regularization as per the Rules, 1998, without elaborating as to which condition he did not fulfill.

In any case, whatever it may be, once the matter stands closed by a judgment of this Court rendered by a Division Bench, the order dated 28.11.2016 cannot be sustained and in fact is in the teeth of the said judgment and in contempt of it. It appears that the State authority

which passed the order, misinterpreted the judgment of the Division Bench and passed such an order more than two and a half years after the judgment by the Division Bench on 10.07.2014.

It is this order which was challenged by the appellant before the learned Single Judge Bench by means of Writ Petition No. 171 (S/S) of 2017 which has been dismissed.

We have perused the said judgment. Learned Single Judge has failed to appreciate that there was a Division Bench judgment dated 10.07.2014 which approved the regularization of the appellant along with other members of the Association which was the petitioner therein as done in 2005 and the same was to be treated to be regularization as one under the Rules, 1998 and not the Rules, 1979. If there was any flaw, then the State could have sought a review of the said judgment of the Division Bench but no such thing was done. Learned Single Judge however proceeded to dismiss the petition on the ground that the petitioner did not have the requisite experience of three years in the year 1991. What the learned Single Judge failed to appreciate was that in the interregnum, the appellant had been working for almost 14 years on the date of regularization and as on dismissal of the writ petition for almost 30 years. Therefore, this could hardly be a ground to sustain the impugned order dated 28.11.2016, certainly, not in the teeth of the Division Bench judgment dated 10.07.2014. As already stated, after rendering of the judgment dated 10.07.2014, it was not open for the State authorities to revisit the matter. The other qualifications, the appellant fulfills, as there is no dispute over it. He is a I.T.I. certificate holder which is the qualification prescribed for the post in question, although the same has been prescribed subsequent to his engagement on daily wages.

As regards, the contention of Shri Gopal Kumar Srivastava, learned Standing Counsel relying upon the averments made in Paragraph 3 of the supplementary affidavit filed in August, 2024 to the effect that the services of the appellant had been interrupted and he was not in service from 16.04.1991 to 25.10.1991 and 10.12.1991 to 14.03.1996. This is absolutely inconsequential, as on the date of the promulgation of the Rules, 1998, he was very much in service and in any case, all these pleas should have been taken in the earlier round of litigation. There is no question of reopening the matter, as already stated. Learned Single Judge has clearly erred in dismissing the writ petition.

The judgment of the learned Single Judge dated 08.01.2021 is quashed. The order impugned before it dated 28.11.2016 is also quashed.

The appellant shall be treated as regularized in terms of the judgment of the Division Bench dated 10.07.2014 from the date of his regularization, albeit, under the Rules, 1998.

The writ petition is allowed, so is the appeal.

Consequences shall follow accordingly as per law."

13. From the perusal of aforesaid judgment and order it is clear that the Division Bench has taken into account the fact that the controversy in the present case should have concluded when the judgment dated 10.07.2014 was passed in Special Appeal No. 339 of 2004 where the judgment of learned Single Judge was modified and regularisation of petitioners was held to be made in consideration of U.P. Regularisation of Daily Wage Appointment on Group 'C' Post (Outside the purview of the U.P. Public Service Commission) Rules, 1998, and no direction was given to the respondents to re-consider and pass fresh orders.

14. Accordingly, all the orders passed after the judgment and order dated 10.07.2014 are illegal and arbitrary and were rightly quashed by the Division Bench. There is no reason for us to take different view of the matter, once entire controversy has been settled by the Division Bench in the case of Jagdish Prasad Verma in Special Appeal No. 80 of 2021.

15. In the light of above and considering the fact that all the other orders have already been quashed and set aside by the judgment dated 30.08.2024. present writ petitions are also liable to be allowed quashing the order dated 20.03.2023.

16. Accordingly, order dated 20.03.2023 is quashed. The writ petitions are **allowed** with all consequential benefits in favour of the petitioners.

Order Date :- 13.11.2024

A. Verma

(Alok Mathur, J.)